IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 41 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Appellant(s)
Versus
HAJIMIYA SULEMANBHAI SHAIKH & 1 - Opponent(s)

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Appearance :
Mr.K.C.Shah, APP for Appellant(s) : 1,
MR RAMNANDAN SINGH for Opponent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 24/01/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1. Heard learned A.P.P.Mr.K.C.Shah for the State and learned advocate Mr.Divyendu Pathak on behalf of learned advocate Mr.Ramanandan Singh for the respondents extensively. Both the learned counsel for the parties assisted this Court with the papers available with them to go through the appeal. We have perused the copies of the necessary record and evidence as were made available by the learned counsel for the parties and, therefore, a thorough scrutiny has been gone through by us at this stage.

2. The facts reveal that a charge sheet came to be filed from Baroda city police station against both the respondents for the offences punishable under Sections 143, 144, 145, 147, 148, 307, 332, 336, 337, 188 read with Section 149 of the Indian Penal Code as well as under Section 135 of the Bombay Police Act. On committing the said case being Sessions Case No.95 of 2001, both the respondents pleaded not guilty and, therefore, the learned Sessions Judge, Baroda recorded the evidence of prosecution and the statements of the accused under Section 313 of the Criminal Procedure Code were also recorded. After hearing the prosecution and the defence as well extensively, vide judgment and order dated 27.7.2004, both the respondents came to be acquitted by the learned Sessions Judge, Baroda in the above said Sessions case No.95 of 2001 and hence this appeal is preferred by the State against the said judgment and order of acquittal.

3. The incident in question occurred on 17.6.1991 and there was tension in the city of Baroda on account of the pronouncement of results of Parliament elections. The complainant of the case Ajitsinh Danubha Jadeja Head Constable of S.R.P.,was on duty at the point situated near Ajabdhi Mill Four Road in the city of Baroda. Other Constables Nitubha Zala, Karsanbhai Mavjibhai Tadvi, Babubhai and others were also accompanying the complainant on duty at that particular point. At about 16.50 hours though the curfew was imposed in the said areas, the respondent no.1, in breach of such curfew, had kept allegedly his cycle shop open and when he was accosted by the complainant, a crowd of about 150 persons gathered and started pelting stones. It was alleged in the complaint as well that the crowd was insisting to release accused no.1 Hazimiya Sulemanbhai Shaikh, otherwise S.R.P. Constables would be killed. Since the crowd was not dispersing, allegedly two rounds were fired by the complainant in the air and the crowd was dispersed. In the meanwhile, the respondent no.1 escaped from the complainant and gave a blow by iron rod on right leg of the complainant and on account of this blow, the right leg thumb of the complainant received injury as well as on right palm also, the complainant received injuries.

4. Prosecution examined complainant Ajitsinh Jadeja at exh.12, Nitubha Zala at Exh.14, Karsanbhai Tadvi at exh.23, Pravinbhai Chauhan at exh.15 who were the main eye witnesses. The prosecution also examined

other witnesses like panch witnesses etc. After going through the evidence and appreciating the evidence with reference to contentions raised, the learned Judge came to the conclusion that firstly there was no evidence that unlawful assembly was present and that any of the respondents were the members of such assembly and secondly the learned Judge came to the conclusion that though there was no evidence at all against respondent no.2, the fact remains that none of the above said witnesses of police ever knew accused no.1 before the incident. This order of acquittal, which is challenged in this appeal.

5. Going through minutely the evidence recorded and considering the circumstances of the case, it clearly appears that firstly the evidence clearly reveals that the crowd was gathered after the alleged incident and, therefore, the question of there being unlawful assembly would not arise at all. While appreciating the evidence of the complainant and injured, the learned trial Judge has observed, as we have seen from the record, that the complainant Ajitsinh did not know accused no.1 let alone accused no.2. There is contradiction in the complaint filed by him and deposition which he gave before the Court which is brought on the record. The complainant admitted that both the accused were unknown to him. No identification parade was admittedly held by the Investigating Agency. Same way, the other witnesses Nitubha Zala, Karsanbhai Tadvi also deposed their ignorance about knowing the accused in advance to the

extent that witness Karsanbhai Tadvi stated that he was not able to identify any of the accused in the Court while witness Pravinbhai Chauhan has not supported the prosecution case. None of the witnesses had deposed about the presence of accused no.2 at the time of the incident. The description of the incident which is engrafted in the complaint and deposed before the Court is in contradiction. On the contrary, the fact remained established during the evidence of the witnesses that when exchange of word took place between S.R.P. Personnel and accused no.1, there was no crowd at all. Only that as per the allegations, when accused no.1 was arrested and apprehended by S.R.P.Personnel, the crowd was gathered, presence of any of the accused or the members of that crowd, therefore, became doubtful. The very important fact which came to be recorded by the trial Court is a Vardhi at Exh.18 stated to have been issued by Dr.Mrs.Meenaben Patel of the Government Hospital to the duty Head Constable Udaysinh Chandrasinh at about 17.40 hours in which it was stated that one person named Hazimiya who had kept his cycle shop open in curfew came to be beaten by S.R.P.personnel whose name he did not know. Hazimiya was treated in the said hospital. At the same time, what is required to be considered is the fact that no medical evidence whatsoever as to the injuries sustained by the complainant could be brought on record by the prosecution.

6. Having carefully gone through the evidence on

record and the reasoning given by the learned trial Judge, it clearly appears that we do not find any perversity or miscarriage of justice in appreciating the evidence by the trial Court. Reasoning which the trial Court adopted are unexceptionable for which no other view can be taken by this Court at this juncture also.

7. In the above view of the matter, this appeal stands dismissed.

(J.R.VORA, J)

(SHARAD D DAVE, J)

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